

DECISION



ma Pettit
PLI
14283
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-199062

DATE: July 16, 1980

MATTER OF: Rocky's Trailer Manufacturing, Inc. *DL604934*

DIGEST:

Protest alleging apparent impropriety in IFB, agency's failure to include small business and small disadvantaged business concerns clause, not filed prior to bid opening, is clearly untimely. However, assuming, arguendo, that matter is for consideration under "significant issue" exception to timeliness rules, protest is without merit since procurement was total small business set-aside and statute and regulation except small business bidders and offerors from requirement.

Rocky's Trailer Manufacturing, Inc. (RTM), a small business concern, protests the award of a contract under invitation for bids (IFB) No. DAAK30-80-B-0002, a total small business set-aside, issued by the Department of the Army, Army Tank-Automotive Research and Development Command, Warren, Michigan. *AGC01414*


RTM contends that the IFB should have included the "SUBCONTRACTING PLAN FOR SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS" clause set forth in Defense Acquisition Regulation (DAR) § 7-104.14(c), Defense Acquisition Circular No. 76-19, July 27, 1979, as required by DAR § 1-707.3(c) (1976 ed.). RTM asserts that the omission contravenes the requirements of Public Law 95-507, October 24, 1978, 92 Stat. 1757, and concludes that the solicitation should be canceled and the Army's requirements resolicited in accordance with the applicable procurement regulations.

011313
[Protest Involving Solicitation Requirements] *112774*

RTM's protest concerns alleged deficiencies in the IFB which were apparent prior to bid opening, April 14, 1980, necessitating the filing of a protest before that date. 4 C.F.R. § 20.2(b)(1) (1980). Because we did not receive RTM's protest telegram until June 2, 1980, the protest is clearly untimely filed. However, RTM asserts that its protest raises issues significant to procurement practices because the IFB is potentially in violation of Federal procurement law and regulations and should be considered on the merits under the exceptions to our timeliness standards, 4 C.F.R. § 20.2(c) (1980).

The "significant issue" exception to our timeliness rules is limited to issues which are of widespread interest to the procurement community and is exercised sparingly so that timeliness standards do not become meaningless. See General Automatic Corporation, B-190216, January 5, 1978, 78-1 CPD 8. Assuming, arguendo, that the protest raises a significant issue, both Public Law 95-507, chapter 2, § 211(7), and DAR § 7-104.14(c)(d)(2) provide that subcontracting plan requirements do not apply to offerors or bidders who are small business concerns. Thus, there was no requirement that the subcontracting plan clause be included in the solicitation as it was a total small business set-aside.

The protest is dismissed.


Milton J. Sogolar
General Counsel